Error to Corporation Court of City of Bristol.

Garnishment proceeding by the Barker-Bond Lumber Company, Incorporated, against Irving Whaley, trustee in bankruptcy of J. A. Wilkinson, bankrupt. Upon an order dismissing the garnishment, plaintiff brings error. Reversed, and case remanded.

Gilmer, Warren & Stant, of Bristol, for plaintiff in error.

J. S. Ashworth and *Peters & Lavinder,* all of Bristol, for defendant in error.

CLINCHFIELD COAL CORPORATION *v.* CRUISE'S ADM'R.

Sept. 9, 1915.

[86 S. E. 135.]

1. Master and Servant (§ 217*)—Assumption of Risk—Absence of Rules.—A mining employee assumed the risk of any dangers incident to the lack of rules as to scotching cars to hold them in place while being loaded and the method in which it was done; their lack and such method being matters necessarily within his actual knowledge, and he having made no protest.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 574-600; Dec. Dig. § 217.* 9 Va.-W. Va. Enc. Dig. 693.]

2. Master and Servant (§ 177*)—Injury to Servant—Negligence of Fellow Servant.—The master having furnished the kind of instrumentalities commonly used and relied on in a mine for scotching cars, it was not liable to a miner injured by a fellow servant improperly and negligently using only part of them.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 307, 352, 353; Dec. Dig. § 177.* 9 Va.-W. Va. Enc. Dig. 714.]

3. Master and Servant (§ 211*)—Assumption of Risk—Known Method of Work.—A miner assumed the risk of danger incident to the absence of brakes on cars; such lack being a general and permanent condition prevailing throughout the mine, a well-known incident to the method in which the work was being done.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 557; Dec. Dig. § 211.* 9 Va.-W. Va. Enc. Dig. 694.].

4. Master and Servant (§ 217*)—Assumption of Risk—Unsafe Place.—A miner assumed the risk of unsafe place in which to work, and to go to and from work; he having known, or had every means of knowing, thereof before his accident, and made no complaint.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 574-600; Dec. Dig. § 217.* 9 Va.-W. Va. Enc. Dig. 696.]

5. Master and Servant (§ 288*)—Assumption of Risk—Questions for Court and Jury.—While the question of an employee having assumed the risks incident to his employment may be one for the jury,

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

it is for the court where the alleged causes of danger are so open and obvious, and the servant's knowledge or opportunity for knowledge so complete, as to leave no doubt that he knew or ought to have known all about them.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1068-1088; Dec. Dig. § 288.* 9 Va.-W. Va. Enc. Dig. 726.]

6. Master and Servant (§ 276*)—Injury to Servant—Proximate Cause—Evidence.—Evidence in an action for death of a miner from a runaway car held insufficient to show that the condition of the air course was the proximate cause of the injury.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 950-952, 954, 959, 970, 976; Dec. Dig. § 276.* 9 Va.-W. Va. Enc. Dig. 721.]

7. Master and Servant (§ 97*)—Duty of Master—Foreseeing Danger.—The master is required to foresee and guard against only the usual and probable danger, and so is not liable on account of the condition of the air course in a mine, in which a miner was caught by a runaway car, where he would have been safe if met there by a car operated as usual.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 163; Dec. Dig. § 97.* 9 Va.-W. Va. Enc. Dig. 689.]

Error to Circuit Court, Dickenson County.

Action by Jewell Cruise's administrator against the Clinchfield Coal Corporation. Judgment for plaintiff, and defendant brings error. Reversed and remanded.

W. H. House, of Clintwood, *J. Norment Powell,* of Bristol, and *Morison, Morison & Robertson,* for plaintiff in error.

Sutherland & Sutherland, of Clintwood, for defendant in error.

DIXON LIVERY CO. *v.* BOND.

Sept. 9, 1915.

[86 S. E. 106.]

1. Trial (§ 9*)—Separate Trials in Cause—Issues—Partnership.—Where, in an action by plaintiffs alleged to constitute a partnership, defendant denied the partnership and filed other pleas, the court could, within its discretion, direct a trial on the issue of partnership and submit that issue to the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 6, 7; Dec. Dig. § 3.* 10 Va.-W. Va. Enc. Dig. 894.]

2. Pleading (§ 411*)—Failure to Object—Plea of Set-Off—Sufficiency.—A plea of set-off, in an action by partners on a check given by defendant for goods bought, which alleges that a partner was in-

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.